



November 13, 2025

[REDACTED]

RE: [REDACTED] v. WV DoHS
ACTION NO.: 25-BOR-3024

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Human Services. These same laws and regulations are used in all cases to ensure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Amy Hayes
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: Connie Sankoff, RN
[REDACTED]

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

[REDACTED],

Appellant,

v.

Action Number: 25-BOR-3024

**WEST VIRGINIA DEPARTMENT OF HUMAN SERVICES
BUREAU FOR MEDICAL SERVICES,
BUREAU OF SENIOR SERVICES**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on November 5, 2025.

The matter before the Hearing Officer arises from the September 23, 2025, decision by the Respondent to discontinue the Appellant's Aged and Disabled Waiver Medicaid Services.

At the hearing, the Respondent appeared by Connie Sankoff, Registered Nurse/Fair Hearings Representative, Bureau of Senior Services (BoSS). Appearing as a witness for the Respondent was [REDACTED], Case Manager for [REDACTED]. The Appellant was present for the hearing and was represented by his mother, [REDACTED]. All witnesses were placed under oath and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Request for Hearing post-marked by the USPS October 1, 2025
- D-2 Scheduling Order and accompanying cover letter dated October 6, 2025
- D-3 Aged and Disabled Waiver Request for Discontinuation of Service dated September 18, 2025
- D-4 Section 501.38 of the BMS Provider Manual
- D-5 Correspondence from BoSS to the Appellant dated September 23, 2025
- D-6 [REDACTED] County Circuit Court Order of Appointment of Conservator and/or Guardian entered on June 15, 1995

D-7 [REDACTED] County Circuit Court Order Regarding Petition to Terminate, Revoke or Modify Appointment of Guardian and/or Conservator entered on April 18, 2025, and [REDACTED] County Circuit Court Findings and Recommendation of Mental Hygiene Commissioner on Petition to Terminate, Revoke or Modify Appointment dated April 17, 2025.

D-8 Medical Power of Attorney dated April 26, 2016

D-9 Section 501.6.3 of the BMS Provider Manual

Appellant's Exhibits:

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Appellant is a recipient of Aged and Disabled Waiver (ADW) Medicaid services.
- 2) An Order of Appointment of Conservator and/or Guardian, originally recorded on June 15, 1995, appointed [REDACTED] as the guardian and conservator for [REDACTED], a "protected person." This Order was also recorded in the Circuit Court of [REDACTED] County on April 1, 2003. (Exhibit D-6)
- 3) [REDACTED] Community Action Council is an ADW provider agency. It provided personal attendant services to the Appellant through the ADW program before February 2025. [REDACTED] Community Services deemed [REDACTED] to be qualified to be paid as a personal attendant and provide personal care services to the Appellant.
- 4) The personal attendant services for the Appellant were transferred to [REDACTED] Support Services ADW provider agency (hereinafter referred to as [REDACTED] in February 2025. [REDACTED] deemed [REDACTED] not to be qualified as a personal attendant because she was the legal guardian of the Appellant. [REDACTED] did not pay [REDACTED] to provide personal care services to the Appellant as a personal attendant.
- 5) The last date that personal attendant services were provided for the Appellant was February 18, 2025. (Exhibit D-3)
- 6) [REDACTED] appeared before the Mental Hygiene Commissioner in the Circuit Court of [REDACTED] County, West Virginia, on April 13, 2025, for a hearing on a Petition to Terminate, Revoke or Modify Appointment as guardian and/or conservator of the Appellant. (Exhibit D-7)

- 7) Findings and Recommendation of Mental Hygiene Commissioner on Petition to Terminate, Revoke or Modify Appointment [*West Virginia Code: § 44A-4-6*] were made April 17, 2025. The finding was: “The guardian is also a care giver. It is in the best interest of the protected person to have his mother/guardian to be paid to provide care for the protected person. All costs to be paid by the state.” (Exhibit D-7)
- 8) An Order Regarding Petition to Terminate, Revoke or Modify Appointment of Guardian and/or Conservator [*West Virginia Code: § 44A-14-6 and 7*] was entered on April 18, 2025. It states that the Court hereby accepts and adopts the entire Findings and Recommendations, without amendment, of the Mental Hygiene Commissioner, which constitutes the basis of the Order. (Exhibit D-7)
- 9) [REDACTED] did not provide personal attendant services to the Appellant because it found that the care giver chosen by the Appellant, [REDACTED], did not qualify as a personal attendant under Bureau for Medical Services policy, because she was also his legal guardian.
- 10) [REDACTED] is not an employee of an ADW provider agency.
- 11) On September 23, 2025, a letter was sent to the Appellant notifying him that the in-home services he applied for under the Medicaid Aged and Disabled Waiver program were discontinued because no Personal Attendant services had been provided for 180 consecutive days. (Exhibit D-3)
- 13) On September 30, 2025, the Appellant requested a fair hearing. (Exhibit D-1)

APPLICABLE POLICY

The Code of Federal Regulations § 440.167 Personal care services provides, in pertinent part:

Unless defined differently by a State agency for purposes of a waiver granted under part 441, subpart G of this chapter—

(a) Personal care services means services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities, or institution for mental disease that are—

(1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;

(2) Provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and

(3) Furnished in a home, and at the State's option, in another location.

(b) For purposes of this section, *family member* means a legally responsible relative.

WV Aged and Disabled Waiver (0134.R08.00) is the State Plan that is approved pursuant to Section 1115 and 1915 of the Social Security Act and which is a program the state uses to deliver and pay for health services in Medicaid. It is described broadly below:

Provides case management, personal attendant services, adult medical day care, community transition services, environmental accessibility adaptations home, environmental accessibility adaptations vehicle, non-medical transportation, personal emergency response system, pest eradication services, pre-transition case management, and skilled nursing services to individuals ages 65 or older and individuals with physical disabilities ages 18-64 years who meet a nursing facility level of care.

West Virginia Code § 9-1-2 states:

"State Medicaid agency" means the Bureau for Medical Services that is the federally designated single state agency charged with administration and supervision of the state Medicaid program.

Bureau for Medical Services Provider Manual, Section 501.14.2 describes the Participant-Directed Service Option, Personal Options Model, in pertinent part (emphasis added):

The Financial Management Service (FMS) Model available to members to support their use of participant-directed services is Personal Options. Under Personal Options, the member is the Common Law Employer of the personal attendants they hire directly. The FMS is not the employer. The member may appoint a representative to assist with these functions, but the member remains the common law employer. The members will also select a case management agency to provide case management services.

A member's program representative cannot be a member's employee providing Personal Options ADW services to the member.

All personal attendants hired by the member must meet the requirements listed in Section 501.6.3 Personal Attendant Qualifications.

Bureau for Medical Services Provider Manual Chapter 501 defines the Provider Agency and Personal Attendant services under the Aged and Disabled Waiver Program:

501.3 Provider Agency Certification

ADW provider agencies must be certified by the Operating Agency (OA). A certification application must be completed and submitted to the OA. Please refer to the ADW website for program contact information.

An agency may provide both case management and personal attendant services, given that they do not provide both services to the same member. In addition, they are required to maintain the following:

- A separate certification and National Provider Identifier (NPI) for each service,
- Separate staffing, for example, an agency RN may not provide both skilled nursing and case management services for the same member; and
- Separate files must be maintained for case management and personal attendant agency services.
- Agencies providing both case management and personal attendant services to an individual due to no other agency being available or other cultural, ethnic etc. reasons, must have safeguards in place and a waiver granted by BMS (see safeguards section under enrollment)

501.22 Personal Attendant

Personal attendant services are defined as long-term direct-care and support services that are necessary to enable a member to remain at home rather than enter a nursing home, or to enable a member to return home from a nursing home.

More than one personal attendant agency can provide direct care services to a member. Therefore, before a second personal attendant agency is contacted to provide services, the personal attendant agency must contact the OA to explain why a second agency is necessary. The OA must approve the second personal attendant agency before the process continues. The agency the members selected on their Freedom of Choice Personal Attendant form is the primary agency and is responsible for coordinating services. The Person-Centered Service Plan must indicate which agency is the primary agency. The primary agency must coordinate the billable nursing units. There cannot be a duplication of services.

501.6.3 Personal Attendant Qualifications (emphasis added)

A personal attendant is an individual paid to provide the day-to-day care to members utilizing the ADW including both Traditional and Personal Options Service Delivery models.

Medicaid prohibits legally responsible persons from providing ADW services for purposes of reimbursement. Legally responsible persons include the spouse and parent of a minor child. **Court appointed legal guardians are also prohibited from being paid caregivers.** A Medical Power of Attorney (MPOA), Power of Attorney (POA), healthcare surrogate or any other legal representative may provide services. However, if an MPOA, personal attendant, healthcare surrogate, or any other legal representative is providing services they must:

- Work for an ADW provider agency, or
- If the member self-directs, they must have a program representative that is not the MPOA, personal attendant, healthcare surrogate, or any other legal representative.

Personal attendants must be at least 18 years of age and possess the ability to perform the tasks required for the member. In addition, they must have completed the required initial competency-based training before providing service and any annual training thereafter as required. All documented evidence of personal attendant qualifications such as licenses, transcripts, certificates, fingerprint-based background checks, signed confidentiality

statements and references shall be maintained on file by the provider. The provider must have an internal review process to ensure that the personal attendant providing ADW services meets the minimum qualifications as required by policy.

501.38 Discontinuation of Services

The following require a Request for Discontinuation of Services form:

- No personal attendant services have been provided for 180 continuous days – for example, an extended placement in LTC or rehabilitation facility.
- Unsafe Environment – an unsafe environment is one in which the personal attendant and/or other agency staff are threatened or abused, and the staff's welfare is in jeopardy. This may include, but is not limited to, the following circumstances:
 - The member or other household members demonstrate sexually inappropriate behavior; display verbally and/or physically abusive behavior; and/or threaten a personal attendant or other agency staff with guns, knives, or other potentially dangerous weapons, including menacing animals or verbal threats to harm the personal attendant and/or other agency staff.
 - The member or other household members display an abusive use of alcohol and/or drugs and/or illegal activities in the home.
 - The ADW provider agency has been forewarned by a mental health professional/law enforcement of harm or ideations of harm by the member.
 - The physical environment of the member's home is either hazardous or unsafe.
- The provider must follow the steps in the ADW Procedural Guidelines for Non-Compliance and Unsafe Closures. This can be found on the ADW website.
- The member is non-compliant with the Service Plan, the responsibility agreement (if applicable), the program requirements by policy, and the Member Rights and Responsibility Guide.
- The member no longer desires services.
- The member no longer requires services.
- The members can no longer be safely maintained in the community with ADW program services.
- The applicant/member has received a slot but does not accept the required case management services and/or will not allow a service plan to be developed.

The Request for Discontinuation of Services form must be uploaded into the UMC's web portal by the case manager and a notification is sent to the OA that it has been uploaded. The OA will review all requests for a discontinuation of services. If it is an appropriate request, and the OA approves the discontinuation, the OA will send notification of discontinuation of services to the person (or legal representative) with a copy to the case management agency or FE/A). Fair hearing rights will also be provided except if the member (or legal representative) no longer desires services. The effective date for the discontinuation of services is 13 calendar days after the date of the OA notification letter if the member (or legal representative) does not request a hearing.

DISCUSSION

The Social Security Act authorizes and structures the Medicaid program as a joint federal-state partnership. States must comply with federal law (specifically Title XIX of the Social Security Act) in Medicaid administration because Medicaid is a joint federal-state program, and federal law mandates certain requirements for states to receive federal matching funds. Federal law sets the basic framework for the programs, including mandatory eligibility groups and services, while giving states flexibility to design their programs within those rules.

The West Virginia Medicaid Program is administered pursuant to federal law and Chapter 9 of the West Virginia Code. The Bureau for Medical Services (BMS) in the West Virginia Department of Health and Human Services (DoHS) is the single State agency responsible for administering the Program.

The West Virginia Aged and Disabled Waiver (ADW) program provides case management, personal attendant services, and other services, to individuals with physical disabilities ages 18-64 years who meet a nursing facility level of care. The Appellant is an individual found eligible to receive personal attendant services under the Medicaid ADW Program.

The personal attendant services provided under the ADW program are a type of personal care services. Federal rules state that a State agency, for purposes of a waiver, has authority to define types of personal care services it will provide through its programs. BMS has defined that, for the ADW program, a personal attendant is an individual paid to provide day-to-day care to members utilizing the ADW, including both Traditional and Personal Options Service Delivery models. Further, BMS has defined in its policy that court appointed legal guardians are prohibited from being paid caregivers.

The Appellant was represented in the hearing by his mother, [REDACTED] testified that the Appellant received personal attendant services through the ADW program prior to February 2025, and that she was the personal attendant paid to provide the day-to-day care of the Appellant.

Ms. Connie Sankoff appeared for the Respondent. She testified that the last date qualifying personal attendant services were provided to the Appellant was on February 18, 2025. 180 days from February 18, 2025, was August 17, 2025. The Respondent issued a notice to the Appellant that his services were discontinued on September 23, 2025, because no personal attendant services had been provided for 180 days.

Personal attendant services under the ADW program are provided by ADW provider agencies. ADW provider agencies employ staff who provide personal attendant services and are required to ensure that their workforce is qualified to maintain their certification. Based on the evidence and testimony, [REDACTED] Community Council was the ADW provider agency providing services to the Appellant prior to February 2025. [REDACTED], witness for the Respondent and Case Manager for [REDACTED] County Opportunity Company, testified that [REDACTED] Community Services deemed [REDACTED] to be qualified to be paid as a personal attendant and provide personal care services to the Appellant. [REDACTED] also testified that [REDACTED] became the ADW

provider agency in February 2025. She testified that [REDACTED] deemed [REDACTED] to not be qualified as a personal attendant because she was the legal guardian of the Appellant.

The type of personal attendant services the Appellant receives must comply with both federal and state laws, rules, and policies. Taken together, these laws, rules, and policies stipulate that the Appellant's personal attendant services cannot be provided by a court appointed legal guardian.

[REDACTED] testified that she went to court twice to try to get the personal attendant services resumed. A Court Order entered in the Circuit Court of [REDACTED] County, West Virginia, on April 18, 2025, was admitted as evidence (Exhibit D-7). The Order adopts the findings of the Mental Hygiene Commissioner, which found "The guardian is also a care giver. It is in the best interest of the protected person to have his mother/guardian to be paid to provide care for the protected person. All costs to be paid by the state."

While the Order of the Court requires services to be paid for by the State, it does not specify which services. The ADW program specifies that court appointed legal guardians are prohibited from being paid caregivers of personal attendant services.

On February 18, 2025, the ADW provider agency determined that [REDACTED] was not qualified to be a personal attendant because she is the Appellant's court appointed legal guardian. Therefore, the Respondent correctly determined that qualifying personal attendant services had not been provided to the Appellant after February 18, 2025. Policy states that services can be discontinued if no personal attendant services have been provided for 180 continuous days. After August 17, 2025, the Respondent correctly discontinued personal attendant services.

CONCLUSIONS OF LAW

- 1) The Bureau for Medical Services (BMS) is the single State agency responsible for administering the Medicaid Aged and Disabled Waiver (ADW) Program. It has authority to promulgate rules regarding the administration of the waiver pursuant to federal law and state law.
- 2) BMS has defined that a personal attendant is an individual paid to provide day-to-day care to members utilizing the ADW program. It has also defined that court appointed legal guardians are prohibited from being paid caregivers of personal attendant services. Thus, a court appointed legal guardian is not deemed to be qualified as a personal attendant under the ADW program.
- 3) [REDACTED] is the Appellant's court appointed legal guardian and is prohibited from being a paid caregiver of personal attendant services.
- 4) The ADW provider agency providing personal attendant services to the Appellant after February 2025 correctly determined that [REDACTED] was prohibited from serving as the Appellant's personal attendant because she was his court appointed legal guardian.

5) Qualifying personal attendant services were not provided to the Appellant after February 18, 2025, and the Respondent correctly discontinued the services more than 180 days from the last date qualifying services were provided.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to discontinue the Appellant's ADW Program.

ENTERED this 13th day of November 2025.

Amy Hayes
State Hearing Officer